

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL SEAN GIANAKOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 1:21-cv-01056-NONE-SKO (HC)

ORDER GRANTING PETITIONER'S
MOTION TO DISMISS PETITION
(Doc. No. 8)

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT TO
ASSIGN DISTRICT JUDGE FOR PURPOSE
OF CLOSING CASE AND THEN ENTER
JUDGMENT AND CLOSE CASE

Petitioner Michael Sean Gianakos is a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 9, 2021, the assigned magistrate judge issued findings and recommendations to dismiss the petition. (Doc. No. 4.) Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within thirty (30) days after service. On July 26, 2021, petitioner filed a request to withdraw the petition. (Doc. No. 8.)

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Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, "the [petitioner] may dismiss an action without a court order by filing: a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment" Pursuant to Rule 12 of the Rules Governing Section 2254 Cases, "[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provision or these rules, may be applied to a proceeding under these rules."

In this case, Respondent has not yet filed an answer or other responsive pleading. Therefore, under Rule 41(a)(1), the petition must be dismissed.

ORDER

Accordingly, it is hereby ordered:

1. Petitioner's motion to dismiss the petition (Doc. No. 8), is granted;
2. The petition for writ of habeas corpus is dismissed; and
3. The clerk of court is directed to assign a district judge to this case for the purpose of closing the case and then to enter judgment and close the case.

This order terminates the action in its entirety.

IT IS SO ORDERED.

Dated: October 6, 2021


UNITED STATES DISTRICT JUDGE